RICHARD E. DOSCHER
LEIDA DOSCHER

IBLA 84-637 Decided October 25, 1984

Appeal from decision of California State Office, Bureau of Land Management, rejecting application for conveyance of federally owned mineral interest CA-15568.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Reservation and Conveyance of Mineral Interests -- Rules of Practice: Generally

BLM may reject an application for conveyance of a federally owned mineral interest, filed pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1982), because the applicant failed to pay estimated administrative processing costs within 30 days of receipt of notice to do so. However, when BLM has failed to deduct the fee submitted with the application in its cost calculation, the BLM decision may be set aside and the case remanded to BLM to afford the applicant another opportunity to pay the corrected amount.

APPEARANCES: Richard E. Doscher and Leida Doscher, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Richard E. Doscher and Leida Doscher have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated May 4, 1984, rejecting their application for conveyance of a federally owned mineral interest CA-15568.

On January 26, 1984, appellants filed an application for conveyance of the federally owned mineral interest in 18 acres of land situated in the SE 1/4 SW 1/4 sec. 10, T. 3 S., R. 15 E., Mount Diablo Meridian, Mariposa County, California, pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719(b) (1982). The surface

estate had been conveyed out of Federal ownership by patent 1007900, which contained mineral reservation to the United States. Appellants are the current record owners of the surface estate.

By letter dated February 29, 1984, BLM required appellants to pay $800 (the estimated administrative and mineral examination costs of processing appellants' application) within 30 days from receipt of the letter, pursuant to 43 CFR 2720.1-3. The BLM notice stated that appellants would be "billed or reimbursed" when the actual costs were determined. BLM noted that the estimate of costs did not include the potential value of the minerals or the cost of any required exploratory program and that payment of the estimated costs did not guarantee conveyance of the federally owned mineral interest. The BLM notice concluded with a statement that failure to pay timely would constitute a "withdrawal" of appellants' application and, in such event, the case would be closed.

On March 20, 1984, appellants objected to payment of the $800. Appellants noted that they were required to pay considerably less with respect to an earlier application for conveyance of a federally owned mineral interest. BLM responded on April 6, 1984, stating that the difference between the costs assessed for the earlier application (CA-8585), and the estimated costs for the present application was the result of better tracking of actual costs by BLM and the fact that the $285 charged for the previous application included only the cost of the mineral examination. 1/ BLM further stated that it would grant additional time for appellants to submit the estimated processing costs "upon receipt of your written request." No request for additional time was filed.

In its May 4, 1984, decision BLM rejected appellants' application because appellants had failed to submit payment of the estimated administrative and mineral examination costs pursuant to the February 1984 letter. Appellants have appealed from this decision.

[1] Section 209(b) of FLPMA, supra, provides for conveyance of federally owned mineral interests to the record owner of the surface estate, "upon payment of administrative costs and the fair market value of the interests being conveyed." The applicable regulation requires BLM to "determine the amount of deposit required and so inform the applicant" within 90 days of receipt of an application to purchase. 43 CFR 2720.1-3(a). In addition, the regulation provides that

> [n]o application * * * shall be processed until the applicant has either --
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> (1) Deposited with the authorized officer an amount of money that the authorized officer estimates is needed to cover

1/ BLM has submitted the case file with respect to application CA-8585 for conveyance of the federally owned mineral interest in the NW 1/4 NW 1/4 sec. 14, T. 3 S., R. 15 E., Mount Diablo Meridian, Mariposa County, California. By decision dated Apr. 9, 1981, BLM required appellants to pay actual administrative processing costs of $335, but deducted $50, which had been submitted with the application pursuant to 43 CFR 2720.1-2(c). The mineral estate was conveyed to appellants by patent dated May 7, 1982.

> administrative costs of processing, including, but not limited to, costs of conducting an exploratory program, if one is required, to determine the character of the mineral deposits in the land, evaluating the existing data [or the data obtained under an approved exploratory program] to aid in determining the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance, or
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> (2) Has obtained the consent of the authorized officer to conduct an exploratory program, * * * and deposited with the authorized officer an amount of money the authorized officer estimates is needed to cover administrative costs of processing * * *.

43 CFR 2720.1-3(b). After a determination that an application satisfies the statutory requirements, BLM is required to notify the applicant of the "administrative costs involved in development of and issuance of conveyance documents," and the applicant is required to submit payment of the difference, if any, between actual costs and the deposit. 43 CFR 2720.3(a). Failure to pay within 90 days from the date the notice is mailed is deemed to "constitute a withdrawal of the application and the application will be dismissed and the case closed." Id.

We conclude that it is proper for BLM to make demand for deposit of the estimated administrative processing costs pursuant to 43 CFR 2720.1-3(a). Further, if the applicant fails or refuses to deposit the required amount in a timely manner, BLM may properly consider the application to have been withdrawn, as failure to pay timely in either case raises the presumption that the applicant no longer desires to pursue his application. Cf. Arthur Ancowitz, 53 IBLA 69 (1981).

Appellants have submitted no evidence that the estimate of the administrative processing and mineral examination costs was not appropriate. On appeal, appellants have again based their objections on the charges assessed for processing a previous application, but have not tendered any evidence which would lead us to conclude that the amount called for in this instance was unreasonable. Further, even if we were to find that estimate was high, we would not overturn the determination unless it was found to be unreasonably high. Upon completion of the examination and processing of appellants' application, appellants will be given a final billing. If they then question the costs actually incurred, they will be given an opportunity to challenge these costs. 2/ Thus, we conclude that there is no basis for overturning BLM's estimate of the administrative and mineral examination costs.

We note that, in connection with application CA-8585, BLM applied the $50 nonrefundable fee submitted with the application to the administrative and examination costs. However, in the case now before us BLM did not deduct the $50 fee which appellants have submitted pursuant to 43 CFR 2720.1-2(c)

2/ Appellant contends that a mineral examination of the land was conducted at the time of examination of an adjacent parcel. While there is no record of the examination in the file before us, if the tract has been examined previously, this fact should result in reduced examination costs and thus be reflected in the determination of actual costs.

from the estimated costs. Thus, with the estimated costs being $800, appellants should have been required to advance an additional $750 rather than $800. We hereby set aside the decision appealed from and remand the case to BLM. Appellants should be afforded an opportunity to submit $750 in payment of the balance of the estimated administrative processing costs associated with application to purchase CA-15568.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to BLM for further action consistent herewith.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge